IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

A.O. No. 178 of 2005

Date of decision: 21st February, 2006

A.F.R. (Approved for Reporting)

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~~Not Approved for Reporting~~

Date 21.2.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 178 of 2005

Oriental Insurance Company Ltd.,
Haridwar,
Through its Divisional Manager,
Divisional Office, Haldwani,
Nainital. …… Appellant

Versus

1. Maan Bahadur,
   S/o Late Sri Ank Bahadur,
   R/o C/o Ashok Kumar Vishnoi,
   Shopkeeper Kodia,
   Kotdwar.
2. Amrat Versha Udyog Ltd.
   Jashodpur,
   Kotdwar. …… Respondents

Mr. T.A. Khan, Advocate for the appellant.
Mr. B.P. Nautiyal, Advocate for respondent No. 1.

JUDGMENT

Coram: Hon. Rajeev Gupta, C. J.
Hon. M.M. Ghildiyal, J.

RAJEEV GUPTA, C. J. (Oral)

Mr. T.A. Khan, learned counsel for the appellant, Mr. B.P. Nautiyal, learned counsel for respondent No. 1.

2. With the consent of the learned counsel for the parties, the appeal is finally heard.

3. This is insurer's appeal against the award dated 25.02.2005 passed by Motor Accident Claim Tribunal / District Judge, Pauri Garhwal in Motor Accident Claim Petition No. 90 of 1999, whereby the Tribunal awarded compensation of Rs. 3,18,000/- to respondent No. 1 Maan Bahadur.

4. Claimant Maan Bahadur claimed compensation of Rs. 8,04,000/- for the injuries sustained by him in the accident, which took place on 07.02.1999 when the offending vehicle Truck bearing

registration No. UP 07B – 1005 met with an accident resulting in serious injuries to claimant Maan Bahadur.

5. Appellant Oriental Insurance Company Ltd. contested the claim on several grounds. The Insurance Company even disputed the accident itself.

6. The Tribunal, on the evidence led by the parties, held that claimant Maan Bahadur suffered injuries in the accident; the accident took place on account of rash and negligent driving of the driver of the offending vehicle Truck bearing registration No. UP 07B – 1005; and that the offending vehicle was insured with appellant Oriental Insurance Company Ltd. at the relevant time. Considering the evidence led by the claimant in regard to the injuries suffered by him in the accident and the amount spent on treatment, the Tribunal awarded compensation of Rs. 3,18,000/- to the claimant.

7. Appellant Oriental Insurance Company Ltd. is challenging the award on merits.

8. Neither it is mentioned in the memorandum of appeal nor during the course of hearing, the learned counsel for the appellant could demonstrate that the appellant Insurance Company was granted permission under Section 170 of the Motor Vehicles Act to contest the claim on all available defences.

9. The Apex Court, while considering the scope of challenge to the award at the behest of the Insurance Company in the case of **National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and others** reported in **(2002) 7 SCC 456,** has observed in paras 31 and 32 as follows:

> "31. We have already held that unless the conditions precedent specified in Section 170 of the 1988 Act are satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion

between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the insurance company to contest the claim, in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits, in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-section (2) of Section 149 of the 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer *res integra* that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

32. For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under Section 173 of the 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle."

10. As the appellant Insurance Company was not granted permission under Section 170 of the Act, the award is not open to challenge on merits at the behest of the appellant Insurance Company in view of the above quoted dictum of the Apex Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and others (supra). The appeal, therefore, is liable to be dismissed.

11. We, therefore, dismiss the appeal filed by the appellant Insurance Company under Section 173 of the Act against the impugned award dated 25.02.2005 passed in Motor Accident Claim Petition No. 90 of 1999. No order as to costs.

(M.M. Ghildiyal, J.)
21.02.2006

(Rajeev Gupta, C.J.)
21.02.2006

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